IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.
WRIT PETITION NO.2846 OF 2006

N. P. Wadkar ..Petitioner.
Vs.
Air India Limited ..Respondent.

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Mr. N.M. Ganguli for the Petitioner.
Mr. S.K. Talsania, Senior Advocate for the Respondent.

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CORAM: DR. D.Y. CHANDRACHUD, J.
20th November, 2006.

P.C. :

This is not a fit and proper case for the exercise of the jurisdiction under Article 226. The workman was dismissed from service after a disciplinary enquiry. The enquiry is conceded to be fair and proper before this Court. There is no challenge to the fairness of the enquiry in the submissions. The charge which has been held to be established is that the workman was between July 1995 and February 1996 late on 65 different occasions involving a loss of over 46 man hours. The reply of the workman himself dated 11th April, 1996 (Exh. C) would show that this was a second charge sheet. The earlier charge sheet was issued for a similar misconduct, where there has been a loss of 105 man hours on account of late attendance. In the present case, the Tribunal had initially declined to grant its approval under Section 33(2)(b) of the

Industrial Disputes Act, 1947, but in a challenge before a Learned Single Judge the order of the Tribunal was set aside on 29th January, 2001 as a result whereof approval was granted. The order was confirmed by the Division Bench on 27th March, 2002. Undoubtedly, both the order of the Learned Single Judge and of the Division Bench in appeal dealt with the question as to whether approval should have been granted under Section 33(2)(b) of the Industrial Disputes Act, 1947 and would not foreclose an evaluation by the Tribunal on a substantive reference under Section 10. For, it is a settled principle of law that a reference under Section 10 would be maintainable even after an approval application is granted under Section 33(2)(b). However, the facts of the present case are gross and it cannot be said that the punishment of dismissal that was imposed for a proved misconduct is disproportionate in any manner. The workman was habituated to late attendance. There was an earlier charge sheet and it was on the misconduct being found established in the second charge sheet that the punishment of dismissal was imposed. On the facts of the present case, the interference of this Court under Article 226 is not warranted. The Petition is dismissed.